

STATE OF INDIANA)
) SS:
COUNTY OF STARKE)

IN THE STARKE CIRCUIT COURT

CAUSE NO. 75C01-0404-PL-020

STATE OF INDIANA,)

Plaintiff,)

v.)

STACIE BINKLEY,)

Defendant.)

FILED

APR 8 5 2004

Rhonda D. Milner
CLERK OF STARKE CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. The Defendant, Stacie Binkley ("Binkley"), is an individual engaged in the sale of items via the Internet, with a principal place of business located at 807 S. Bauer, Knox, Indiana.

FACTS

3. At least since November 17, 2003, the Defendant has repeatedly offered items for sale via the Internet to consumers.

A. Allegations regarding Shewanda Edwards.

4. On or about November 17, 2003, the Defendant entered into a contract with Shewanda Edwards ("Edwards") of Pleasant Hill, North Carolina, wherein the Defendant represented that she would sell a one-carat diamond ring to Edwards for Five Hundred Twenty-eight Dollars (\$528.00), which Edwards paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that she would ship the ring to Edwards within a reasonable period of time.

6. The Defendant has yet to either issue a refund to Edwards, or to ship the ring to Edwards.

B. Allegations regarding Erin Garness.

7. On or about November 17, 2003, the Defendant entered into a contract with Erin Garness ("Garness") of Ashland, Wisconsin, wherein the Defendant represented that she would sell a "10kt 1.5 ct total weight diamond ring" to Garness for One Hundred Seventy-Five Dollars and Fifty Cents (\$175.50), which Garness paid.

8. Upon information and belief, the ring that the Defendant shipped to Garness was a cubic zirconia, and was not the pictured diamond ring.

9. On or about December 7, 2003, the Defendant sent an E-mail to Garness misrepresenting that a refund from PayPal was forthcoming.

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that she would ship the represented ring to Garness within a reasonable period of time.

11. The Defendant has yet to either issue a refund to Garness, or to ship the genuine diamond ring to Garness.

COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

12. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 10 above.

13. The transactions referred to in paragraphs 4 and 7, are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

14. The Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

15. The Defendant's representations to consumers that she would sell consumers the represented items, when the Defendant knew or reasonably should have known that the consumers would not receive the items, as referenced in paragraphs 4 and 7, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

16. The Defendant's representations to Garness that the diamond ring was of a particular standard, quality, grade, style, or model, that it was not, when the Defendant knew or reasonably should have known that it was not, as referenced in paragraph 7 is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(2).

17. The Defendant's representation to Garness that a refund would be forthcoming, when the Defendant knew or reasonably should have known that said representation was false, as referenced in paragraph 9, is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(7).

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18. The Defendant's representations to consumers that the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known that she would not, as referenced in paragraphs 5, 9, and 10 are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

19. The Defendant's representations to consumers that they would be able to purchase the items as advertised by the Defendant when the Defendant did not intend to sell them, as referenced in paragraphs 4 and 7, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

20. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-19 above.

21. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, 9, and 10 were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Stacy Binkley, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

a. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;

b. representing expressly or by implication that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the Defendant knows or should reasonably know that it is not.

c. Representing expressly or by implication that the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and the Defendant knows or reasonably should know that the representation is false;

d. representing expressly or by implication that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know that she can not; and

e. representing expressly or by implication that a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to the persons identified in paragraphs 4 and 7, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of the Defendant's items via the Internet, including but not limited to, the persons identified in paragraphs 4 and 7, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;


e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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